

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TEVA PHARMACEUTICALS USA, INC.,
TEVA PHARMACEUTICAL INDUSTRIES LTD.,
TEVA NEUROSCIENCE, INC., and
YEDA RESEARCH AND DEVELOPMENT CO. LTD.,
:

Plaintiffs,
:

v.
:

SANDOZ, INC., SANDOZ INTERNATIONAL
GMBH, NOVARTIS AG, and MOMENTA
PHARMACEUTICALS, INC.
:

Defendants.
:

08 Civ. 7611
(BSJ) (AJP)

Order

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BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

Currently before the Court is Plaintiffs' request that the Court order Defendants to provide the Court and Plaintiffs with ten days notice prior to launch of Defendants' intent and ability to launch their product. For the reasons provided below, Plaintiffs' request is DENIED.

DISCUSSION

Earlier this year, Plaintiffs asked the Court to order Defendants to provide the Court and Plaintiffs with, at least, ninety days prior notice of Defendants' ability and intent to launch their product. The Court held a hearing regarding Plaintiffs' request in September of this year. At the hearing,

the Court directed the parties to attempt to reach an agreement regarding Plaintiffs' request.

The parties were unable to reach an agreement. Although Defendants agreed to provide Plaintiffs with notification of approval from the Food and Drug Administration ("FDA") within two hours of receipt, that did not satisfy Plaintiffs. Backing off their request for at least ninety days prior notice, Plaintiffs now argue that they need, at a minimum, ten days prior notice of Defendants' intent and ability to launch their product. In addition to offering to post a bond to alleviate Defendants' concerns regarding possible monetary loss during the notice period, Plaintiffs argue that ten days prior notice is the minimum amount of time they would need to file a motion for preliminary injunction and a temporary restraining order.

While other courts may have, in other circumstances, ordered generic drug makers to provide another party with notice of its intent and ability to launch, the Court finds that it is unnecessary to do so here. Defendants are under no legal obligation to provide Plaintiffs with notice of its intent and ability to launch. Plaintiffs' request amounts, in essence, for the Court to order Defendants to provide Plaintiffs with confidential business information, which, for all intent and purposes, would function as an injunction by prohibiting


Defendants from launching their product even if they have FDA approval and the thirty-month statutory stay period has expired.

Plaintiffs may ultimately be correct that Defendants unwillingness to provide Plaintiffs with notice prior to launch means that Defendants intend to take their product to market immediately upon receiving FDA approval and after the thirty-month stay has expired. While the Court appreciates Plaintiffs' desire to avoid saddling the Court with an emergency and possibly unnecessary request for a temporary restraining order, the Court is confident that Rule 65 of the Federal Rules of Civil Procedure provides more than ample recourse for addressing Plaintiffs' concerns.

CONCLUSION

For the reasons provided above, Plaintiffs' request for an order directing Defendants to provide the Court and Plaintiffs with ten days notice prior to launch of Defendants' intent and ability to launch their product is DENIED.

SO ORDERED:


BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
October 12, 2010